

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTHONY ROMANO,

Plaintiff,

v.

DOCTOR LEVITT,
DOCTOR S. LEUTHE,

Defendants.

DECISION AND ORDER
15-CV-518-A

This case was referred to Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. § 636(b)(1)(B) for the conduct of pretrial proceedings. On March 15, 2018, Magistrate Judge Scott filed a Report and Recommendation (Dkt. No. 78), recommending that the defendants' Fed. R. Civ. P. 56 motion for summary judgment (Dkt. No. 74) should be granted.

Plaintiff Romano had not filed a response to the defendants' motion for summary judgment even after having been granted a *sua sponte* extension of time to do so, and in spite of a clear warning that failing to respond could result in dismissal. Dkt. No. 77. The Court also granted plaintiff Romano additional time to file objections to the Report and Recommendation after he raised mental-health concerns and claimed that relevant legal papers were destroyed. But plaintiff filed no objections, and he failed to seek additional time to file objections, notwithstanding having been warned that a forfeiture or waiver of the right to object could be found. Text Order 83.

The Court has reviewed the Report and Recommendation and the record in this case, and no objections having been timely filed, it is hereby

ORDERED, for the reasons stated in the Magistrate Judge's Report and Recommendation (Dkt. No. 78), summary judgment pursuant to Fed. R. Civ. P. 56 is granted to defendants Jacqueline Levitt and Scott Leuthe. There is no clear error in the Report and Recommendation, and granting summary judgment on the grounds recommended by the Magistrate Judge does not cause manifest injustice.

The Court observes that plaintiff Romano has made timely submissions in other cases he has pending in this District during the time period since the motion for summary judgment was filed. He has twice sought an appointment of counsel since the Report and Recommendation was filed. Despite the plaintiff's asserted history of mental illness, the Court certifies that an appeal of this Decision and Order would not be taken in good faith. See 28 U.S.C. § 1915(c).

IT IS SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: June 12, 2018